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November 29, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

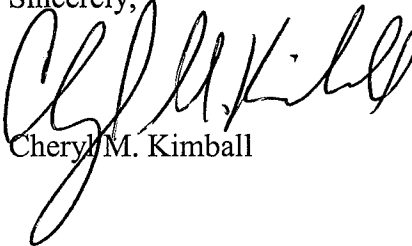
Re: Boston Gas Company d/b/a KeySpan Energy Delivery New England, D.T.E. 05-66

Dear Ms. Cottrell:

Please find attached the response of Boston Gas Company d/b/a KeySpan Energy Delivery New England (the "Company") to the Attorney General's Motion for Clarification and Extension of the Judicial Appeal Period filed on November 21, 2005 in the above-referenced proceeding.

Please contact me if you have any questions regarding the filing.

Sincerely,



Cheryl M. Kimball

Enclosures

cc: Jeanne Voveris, Hearing Officer
Joseph Rogers, Assistant Attorney General

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Gas Company d/b/a
KeySpan Energy Delivery New England

D.T.E. 05-66

**REPLY OF BOSTON GAS COMPANY TO ATTORNEY GENERAL'S MOTIONS
FOR CLARIFICATION AND EXTENSION OF APPEAL PERIOD**

Boston Gas Company d/b/a KeySpan Energy Delivery New England ("Boston Gas" or the "Company") hereby submits this Reply to the Attorney General's Motions for Clarification (the "Motion for Clarification") and Extension of the Appeal Period (the "Motion for Extension") relating to the decision rendered by the Department of Telecommunications and Energy (the "Department") on November 1, 2005 in this proceeding. The Attorney General requests the Department to clarify "what substantial evidence the Department relied upon in making its decision." Motion for Clarification at 4. According to the Attorney General, the Department moved only the Company's responses to "a few" Department information requests into the record, and "implicitly exclude[d] other material submitted by the Parties including the Company's filing; the Attorney General's Comments and sworn attachment; the Company's Reply Comments; and certain information from other proceedings or sources. Id. at 3.

The Attorney General's Motion for Clarification and Motion for Extension are without merit and should be rejected by the Department. The Motion for Clarification does not seek disposition of a specific issue requiring determination in this case as required by Department precedent, but instead appears to be submitted for the purpose of providing

a foundation to obtain an extension of the appeal period. The Motion for Clarification requests the Department to address only the extraneous issue of whether certain filings were considered by the Department as evidence in reaching its determination in this case. However, there is no need for clarification because the Department directly and unambiguously cited to each piece of evidence that the Attorney General now argues was excluded from the record. In particular, the Department's decision cites to the Attorney General's Comments as well as to the Newhard Affidavit. D.T.E. 05-66 at 7, n.9, page 8. The Department's decision also cites to the Company's Compliance Filing at pages 5-6, and cites to the Company's Comments at pages 5-7. Clarification of the Department's decision is not necessary or warranted where the proposition posed (here, that the Department has not cited the evidence upon which it relied in making its decision) is irrelevant to the Department's determination in this case. Clarification is certainly not necessary or warranted where the Department has, in fact, cited to the evidence in the docket upon which it has relied.

Moreover, the Motion for Extension filed by the Attorney General was submitted to the Department on the twentieth day following the Department's issuance of its decision and is similarly without merit. Specifically, the Attorney General has failed to show "good cause" for the Department's grant of an extension.

I. STANDARD OF REVIEW

The Department's standard of review for a motion for clarification is well established:

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning. *Boston Edison Company*, D.P.U. 92-1A-B at 4

(1993); *Whitinsville Water Company*, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. *Boston Edison Company*, D.P.U. 90-35-A at 3 (1992), *citing Fitchburg Gas and Electric Light Company*, D.P.U. 18296/18297, at 2 (1976).

Verizon Massachusetts, D.T.E. 98-57, at 53-54 (Phase III-A), *Order on Motions for Reconsideration, Clarification, Extension of Time, and Extension of Judicial Appeal Period, and Request for Reexamination of Compliance Filing* (January 8, 2001).

General Laws c. 25, § 5 provides, in pertinent part, that an appeal of a final order issued by the Department must be filed with the Department no later than 20 days after service of the order “or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days . . .” See also 220 C.M.R. 1.11(11). The Department’s procedural rules state that reasonable extensions of the appeal period shall be granted upon a showing of good cause. 220 C.M.R. 1.11(11). The filing of a contemporaneous motion for clarification does not, by itself, constitute good cause for an extension of the appeal period. The Berkshire Gas Company, D.T.E. 01-56-A at 2, *citing New England Telephone*, D.T.E. 93-125-A at 14 (1994).

III. ARGUMENT

The Attorney General’s Motion for Clarification is without merit because it does not meet the standard of review for a motion for clarification. Specifically, the Department’s standard requires that a proponent of clarification to demonstrate that the final order is silent on the disposition of a specific issue that requires determination. In this case, the Attorney General’s motion requests the Department to specify the exact “contents of the record relied upon by the Department.” Motion for Clarification at 1. A detailed listing of the “contents” of the record in a proceeding is not required to be set forth in the Department’s final order. Moreover, a statement as to the “contents” of the record is not a

“specific issue that requires determination” in the order. Therefore, the Attorney General’s demonstration that clarification under the Department’s standard is necessary or warranted is deficient.

Moreover, the Motion for Clarification is grounded on the erroneous assumption that the record evidence in this case excludes the Attorney General’s comments and affidavit, as well as the Company’s comments and pleadings because the Department did not mention these items in its footnote on page 1 of the decision. The Attorney General claims that this omission “leaves doubt as to whether the Department considered for evidentiary purposes” filings in the docket made by the Attorney General. However, the Department referenced the Attorney General’s filings throughout its order, and therefore, there is no ambiguity that needs to be resolved on clarification as to the Department’s consideration of the Attorney General’s filings. See, e.g., D.T.E. 05-66, at 7-9. In addition, it is well established that the Department need not make detailed findings of all evidence presented to it, as long as its findings are sufficiently specific to allow the Supreme Judicial Court to review the Department’s decision. Town of Hingham v. Department of Telecommunications and Energy, 433 Mass. 198, at 207 (2001), *citing*, Massachusetts Institute of Technology v. Department of Public Utilities, 425 Mass. 856, at 858-859 (1997).

In that regard, the Department’s basis for its decision is well and thoroughly articulated in the decision. Specifically, the Department first set forth the standard that a proponent of an exogenous cost adjustment must meet: “[P]roponents of an exogenous cost adjustment bear the burden of demonstrating: (1) that the cost change is of a type that is external to the company, is beyond the company’s control, and is unique to the local gas

distribution industry; (2) that the magnitude of the cost change exceeds the company's exogenous cost threshold; and (3) that the cost change is not included in the GDP-PI." Order at 11. The Department then applied the facts of the case to this standard and concluded that "[t]he circumstances presented in this case meet this basic definition of exogenous costs." Id. In particular, the Department found that:

- The increase in the Company's gas-related bad debt expense is due to unprecedented increases in gas commodity prices (Order at 11;
- The impact of the high gas prices on gas-related bad-debt expense and on the ability of Massachusetts local distribution companies to recover such expenses is unique to the local gas distribution industry (Order at 12);
- Cost changes associated with increases in the price of natural gas are not included in the GDP-PI as it relates to Boston Gas' PBR plan (Order at 12);
- The amount of gas-related bad debt expense incurred by the Company is driven by substantial increases in gas costs, which are costs that are beyond the Company's control (Order at 13); and
- The amount that Boston Gas has proposed to recover exceeds the \$800,000 exogenous cost threshold approved for the Company in D.T.E. 03-40, and, therefore, qualifies for recovery as an exogenous cost (Order at 13).

Therefore, it is eminently clear that the Department has set forth in its order all such sufficient findings, has provided a reviewable basis for its decision and no further clarification is therefore necessary or warranted.

The Motion for Extension is similarly without merit. The Attorney General has provided no basis to establish "good cause" other than to preserve the Attorney General's

rights on appeal during the pendency of his Motion for Clarification. Under Department precedent, the filing of a contemporaneous motion for clarification does not, by itself, constitute good cause for an extension of the appeal period. The Berkshire Gas Company, D.T.E. 01-56-A at 2, *citing* New England Telephone, D.T.E. 93-125-A at 14 (1994). The Motion for Clarification is groundless and the Attorney General has provided no basis for an extension *other* than the Motion for Clarification. The Department should not allow the Attorney General to rely on a flawed and unsound legal argument to obtain an extension of the appeal period. Accordingly, the Department should reject the Attorney General's Motion for Extension.

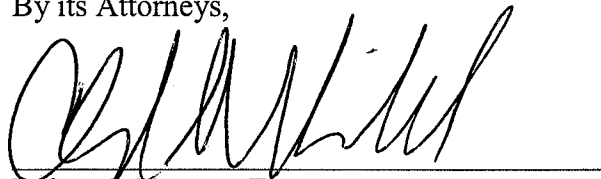
IV. CONCLUSION

For the foregoing reasons, the Attorney General Motion for Clarification and Motion for Extension of the Judicial Appeal Period should be denied in their entirety.

Respectfully submitted,

**Boston Gas Company d/b/a KeySpan
Energy Delivery New England**

By its Attorneys,

A handwritten signature in black ink, appearing to read 'R. J. Keegan', is written over a horizontal line.

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(617) 951-1400

Dated: November 29, 2005